



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
---------------	-------------	----------------------	---------------------

08/178,463 01/06/94 WILSON

12M1/1128

WILLIAM S. FEILER
MORGAN & FINNEGAN
345 PARK AVE.
NEW YORK, NY 10154

EXAMINER
W 20264034US1

GOLDBERG, J

ART UNIT	PAPER NUMBER
1205	17

DATE MAILED:

11/28/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 9/12 and 10/7/94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☐ Claims 3, 4 and 7-14 are pending in the application.

Of the above, claims — are withdrawn from consideration.

2. ☐ Claims — have been cancelled.

3. ☐ Claims — are allowed.

4. ☒ Claims 3, 4 and 7-14 are rejected.

5. ☐ Claims — are objected to.

6. ☐ Claims — are subject to restriction or election requirement.

7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on —. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on — has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on —, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. —; filed on —.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Art Unit 1205

The references cited by applicant should be set forth on a Notice of Art Cited by Applicant, PTO-1449 form.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Art Unit 1205

Claims 3, 4, and 7-14 are rejected under 35 U.S.C. § 103 as being unpatentable over the Rowinsky et al., Holmes et al., and Gilman et al. reference of record for the reasons fully set forth in Paper No. 13, pages 2 and 3. Applicants' remarks and the Wilson declaration are noted. The declaration, however, fails to show a comparison of applicants' 17.5-35mg/m₂ per day for 96 hours vs. the Gilman et al. range of 30 mg/m₂ per day for 5 days. This is clearly the closest prior art.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL

Serial No. 08/178,463

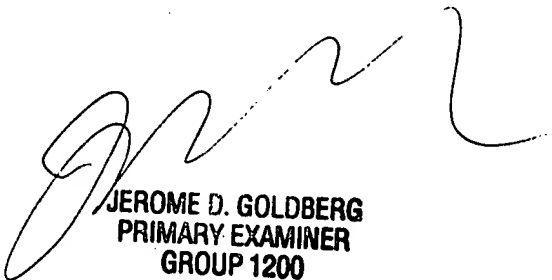
-4-

Art Unit 1205

BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

A facsimile center has been established in Group 1200, room 3C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or 305-3592.

GOLDBERG:jd
November 21, 1994



JEROME D. GOLDBERG
PRIMARY EXAMINER
GROUP 1200